HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI

AND

HON'BLE SRI JUSTICE G. BHAVANI PRASAD

Writ Appeal Nos.1968, 1969, 1970, 1971 and 1973 of 2005

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Writ Appeal No.1968 of 2005

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Between:

Chinnagottigallu Primary Agricultural Cooperative

Credit Society, rep. By its Secretary, Chinnagottigallu

Mandal, Chittoor District.

… Appellant

And

Y. Narayana Reddy and three others

… Respondents

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Counsel for the appellant: Sri C.V. Nagarjuna Reddy

Counsel for respondents 2 to 4: G.P. for Cooperation

Counsel for respondent No.1: Sri M.S. Ramachandra Rao

Writ Appeal No.1969 of 2005

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Piler Primary Agricultural Cooperative Society Ltd.,

rep. By its Person-in-Charge, Piler,

Chittoor District.

… Appellant

And

M.V. Krishna Reddy and 17 others

… Respondents

Counsel for the appellant: Sri C.V. Nagarjuna Reddy

Counsel for respondents No. 14 to 18: G.P. for Cooperation

Counsel for respondents No.1 to 13: Sri M.S. Ramachandra Rao

Writ Appeal No.1970 of 2005

Rompicherla Primary Agricultural Cooperative Credit

Society Ltd., rep. By its Secretary, Rompicherla Mandal,

Chittoor District.

… Appellant

And

C.Purushotham Reddy and 3 others

… Respondents

Counsel for the appellant: Sri C.V. Nagarjuna Reddy

Counsel for respondents No. 2 to 4: G.P. for Cooperation

Counsel for respondent No.1: Sri M.S. Ramachandra Rao

Writ Appeal No.1971 of 2005

The Person-in-Charge, Primary Agricultural Cooperative Credit

Society Ltd., Yerravaripalem, Yerravaripalem Mandal,

Chittoor District.

… Appellant

And

Ovili Viswanatha Reddy and 4 others

… Respondents

Counsel for the appellant: Sri C.V. Nagarjuna Reddy

Counsel for respondents No. 2 to 5: G.P. for Cooperation

Counsel for respondent No.1: Sri M.S. Ramachandra Rao

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Writ Appeal No.1973 of 2005

Gandi Krishnamma and 5 others

… Appellants

And

Collector, East Godavari District, Kakinada

and 13 others

… Respondents

Counsel for the appellants: Sri P.Venugopal

Counsel for respondents No. 1 to 5: G.P. for Cooperation

Counsel for respondent No.8 to 13: Sri M.S. Ramachandra Rao

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::JUDGMENT::

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February 07, 2006

Per G.S. Singhvi, CJ

By this order, we are disposing of the above noted batch of appeals. Of these, Writ Appeal No.1973 of 2005 is directed against order dated 4-10-2005 passed by the learned Single Judge in Writ Petition No.20905 of 2005 whereby he directed the official respondents to conduct elections to the Primary Agricultural Cooperative Credit Society, Pandapaka as per Andhra Pradesh Cooperative Society Rules, 1964 (for short 'the Rules') on the basis of the list of voters which was in existence at the time of appointment of Person-in-Charge, ignoring the additions made therein. The remaining appeals are directed against interim orders passed by the learned

Single Judge to the official respondents not to act upon the revised voters list of the respondent Primary Agricultural Cooperative Credit Societies.

At the outset, we consider it necessary to mention that while admitting the writ appeals, the Division Bench had stayed/suspended the orders passed by the learned Single Judge. The contesting respondents challenged order dated 18-10-2005 passed by the Division Bench in WAMP No.3524 of 2005 (W.A.No.1973 of 2005) by filing petition for Special Leave to Appeal No.21623 of 2005, which was dismissed by the Supreme Court on 11-11-2005.

According to the learned counsel for the appellants, after dismissal of the petition for Special Leave to Appeal by the Supreme Court, elections to various Primary Agricultural Cooperative Credit Societies have been held on the basis of the voters list prepared by the Person-in-Charge and those declared elected have taken charge of their respective offices. This position has not been contested by learned counsel for the contesting respondents.

Now a few facts:

Kovvuri Gopalakrishna Reddy and 6 others filed Writ Petition No.20905 of 2005 for quashing the action of Secretary, Primary Agricultural Cooperative Credit Society, Pandalapaka to induct new members and to include their names in the electoral roll by contending that the same was violative of Rule 14 of the Rules. They also prayed for issuance of a mandamus to the respondents to delete the names of those persons from the list of the members of the society and voters list. According to the writ petitioners, the addition of names in the voters list was clearly contrary to the Scheme of the Andhra Pradesh Cooperative Societies Act, 1964 (for short 'the Act') and the Rules which provide for holding of elections on the basis of the existing voters list. It was further pleaded that inclusion of the names of 167 persons in the voters list was done with a view to manipulate the elections of certain persons.

In the counter-affidavit filed by Sri C.C.V.V.S.N.Murthy, Secretary, Pandalapaka Primary Agricultural Cooperative Credit Society, it was averred that no bogus member has been inducted as member of the society and the election was being held strictly in accordance with the statutory provisions and the rules as amended vide G.O.Ms.No.223, Agriculture & Co-operation (Coop.IV) Department, dated 27-6-2005.

The learned Single Judge, after considering the Scheme of the Act and the Rules and making reference to the judgments of the Supreme Court in **Joint Registrar of Cooperative Societies, Kerala v. T.A. Kuttappan and others**, **K. Shanti Raj and another v. M.L. Nagaraj**, **Shri Sant Sadguru Janardhana Swami v. Sahakari Dugdha Utpadak Sanstha and another**, **P.V. Rajan v. T.P.M. Sahir Ahmed Nagar Zilla S.D,V. & P.Sng. Ltd. v. State of Maharastra and others** and **Pundalik v. State of Maharastra and others**, concluded that the elections are required to be held on the basis of the voters list prepared before appointment of Person-in-Charge and the action of the Secretary in admitting new members was legally unsustainable. Paragraphs 15 and 16 of the order dated 4-10-2005 passed by the learned Single Judge in Writ Petition No.20905 of 2005, which contain the ratio of his judgment and the operative part read as under:

> "15. I am of the considered opinion that this petition cannot be dismissed on the ground that the newly made members are not made parties to this petition because petitioners were not kept on notice about the admission of new members, and since the action of the sixth respondent in admitting new members is ultra vires his powers. So, the presence of those persons is not necessary for determination of this case, because the point for determination in this case is about the power of the sixth respondent to admit members, but not about the right of the third parties to become members of the society. So, I hold that this petition is maintainable. The point is answered accordingly.
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> 16. For the above reasons, writ petition is allowed with costs. Respondents are directed to conduct the elections to the Primary Agricultural Cooperative Credit Society, Pandalapaka Village, Biccavolu Mandal, East Godavari District, as per the A.P. Co-operative Societies Rules on the basis of the list of voters that was in existence when the person-in-charge of that society was appointed, but not with additions made to that voters' list after the person-in-charge took charge of the management of that society."

In WPMP Nos.27857 of 2005 (W.P.No.21687 of 2005), WPMP No.27130 of 2005 (W.P.No.21186 of 2005), WPMP No.27682 of 2005 (W.P.No.21551 of 2005) and WPMP No.27706 of 2005 (W.P.No.21573 of 2005), the learned Single Judge restrained the official respondents from holding election on the basis of the revised voters list of the concerned Primary Agricultural Cooperative Credit Societies.

Sri Venugopal, learned counsel for the appellants in Writ Appeal No.1973 of 2005 assailed the order of the learned Single Judge by arguing that the direction given by him for holding election by excluding the names of newly added persons is

vitiated due to the violation of the rules of natural justice. He and Sri C.V. Nagarjuna Reddy, learned counsel appearing for the appellants in the remaining appeals, argued that the newly added persons could not have been deprived of their right to participate in the process of election without being given opportunity of hearing. Learned counsel submitted that the order of the learned Single Judge is vitiated due to violation of the basic rule of natural justice i.e., audi alterim partem. Sri Venugopal further argued that the writ petition filed by the non-official respondents should have been dismissed because the only remedy available to them was by filing election petition under Section 61 (3) of the Act.

Sri M.S. Ramachandra Rao, learned counsel for the non-official respondents argued that the direction given by the learned Single Judge is unexceptionable and the Division Bench may not interfere with the impugned order because action of the concerned authorities to induct new members in the societies and to include their names in the voters list amounted to fraud on the process of election. He further argued that the learned Single Judge did not commit any error by entertaining the writ petition because the entire process of election was vitiated due to induction of new members in total violation of the statutory provisions.

We have given serious thought to the respective arguments. In our opinion, it is not necessary to decide the objection of the appellants to the maintainability of the writ petitions on the ground of availability of alternative remedy of election petition because we are convinced that the orders under challenge are liable to be set aside only on the ground of non-impleadment of the persons who were likely to be affected by the direction of the learned Single Judge. The question whether the action of the Secretary/Person-in-Charge to induct new members was contrary to law and whether such persons could participate in the process of election could not have been decided by the learned Single Judge without hearing the newly inducted members. The order passed by the learned Single Judge for holding election by excluding the newly elected members directly affects the rights of the newly inducted members and, in our considered view, no order prejudicially affecting them could have been passed by the learned Single Judge without directing the writ petitioners to implead or at least some of them as party respondents and giving them reasonable opportunity of hearing. The fact that number of such persons was very large did not absolve the writ petitioners of their obligation to implead necessary parties.

In **Prabodh Verma v. State of U.P.** a three Judges Bench of the Supreme Court considered the issue of maintainability of the writ petition in the absence of necessary parties and held as under:

> "A High Court ought not to hear and dispose of a writ petition under Art.226 without the persons who would be vitally affected by its judgment being before it as respondents or at least some of them being before it as respondents in a representative capacity if their number is too large to join them as respondents individually, and, if the petitioners refuse to so join them, the High Court ought to dismiss the petition for non-joinder of necessary parties.
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> Where the shikshak sangh, representative body of teachers appointed in educational institutions run by local bodies and private management filed a writ petition to challenge validity of U.P. Ordinance No.22 of 1978, but did not make Reserve Pool teachers who were to be deprived of their chance of appointment in vacancies in the post of teachers in such institution, in case of success, respondents, it was held, that High Court ought not to have proceeded to hear and dispose of the writ petition without insisting upon the reserve pool teachers being made respondents to that writ petition or at least some of them being made respondents thereto in a representative capacity as the number of the reserve pool teachers was too large and, had the petitioners refused to do so, to dismiss that writ petition for non-joinder of necessary parties."

Similar views have been expressed by the Supreme Court in **Udit Narayan Singh v. Board of Revenue**, **Sukhpal Singh v. Punjab State Agrl. Marketing Board**, **Ishwar Singh v. Kuldip Singh**, **Ram Swarup v. S.N. Maira**, **Khetrabasi Biswal v. Ajay Kumar Baral**, **Ramarao v. All India Backward Class Bank Employees Welfare Assn.**. By applying the ratio of the aforementioned judgments to the facts of these cases, we hold that the orders of the learned Single Judge are liable to be set aside only on the ground that the petitioners have not impleaded the affected persons who, as mentioned above, are necessary parties. However, we feel that it will not be appropriate to non-suit the writ petitioners (private respondents herein) only on the ground of non-impleadment of the necessary parties and the ends of justice would be met if an opportunity is given to them to do so.

In the result, Writ Appeal No.1973 of 2005 is allowed. The order of the learned Single Judge is set aside and Writ Petition No.20905 of 2005 is remanded for fresh

adjudication. The writ petition may be listed before the Single Judge on 13-3-2006. The writ petitioners shall be free to amend the writ petition and seek impleadment of the newly inducted members or at least some of them as party respondents. They shall also be free to make a prayer for quashing of the result of the election held during the pendency of the writ appeal.

As a sequel to the above, Writ Appeal Nos.1968, 1969, 1970 and 1971 of 2005 are also allowed and the order of the learned Single Judge is set aside. Writ Petition Nos.21687, 21186, 21551 and 21573 of 2005 shall now be listed before the learned Single Judge on 13-3-2006. The petitioners of these cases shall also be free to seek impleadment of the newly added members or at least some of them as party respondents and also amend the petition for challenging the elections held during the pendency of the writ appeals.

G.S. SINGHVI, CJ

G. BHAVANI PRASAD, J

February 07, 2005

svs